

ORIGINAL

TELEPHONE
(202) 364-6970

LAW OFFICES OF
LEONARD S. JOYCE
5335 WISCONSIN AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20015

FACSIMILE
(202) 686-8282

September 27, 1994

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

SEP 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY


Attn: Chief, Allocation Branch
Mass Media Bureau

Re: MM Docket No. 94-82
RM-8487
Reply Comments

Dear Mr. Caton:

Forwarded herewith are the original and four copies of the Reply Comments of Iowa Great Lakes Broadcasting Company Inc. in the above referenced proceeding.

Very truly yours


Leonard S. Joyce

Enclosure

No. of Copies rec'd
List ABCDE

dy

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of) MM Docket No. 94-82
)
Amendment of Section 73.202(b))
Table of Allotments) DOCKET FILE COPY ORIGINAL
FM Broadcast Stations) RM - 8487
(Spencer and Sac City, Iowa;)
St. James, MN))

To: Chief, Allocation Branch
Mass Media Bureau

Reply Comments of Iowa Great Lakes
Broadcasting Company, Inc.

Iowa Great Lakes Broadcasting Company Inc. ("Petitioner"),
by and through its counsel, submits the following Reply
Comments in the above-captioned proceeding.

1. The Notice of Proposed Rule Making and Order to Show
Cause, herein, ("Notice"), DA94-772, was released July 20,
1994, and consistent with Petitioner's Petition for Rule
Making, herein, requested comments on the proposed amendment of
the FM Table of assignments to: (1) delete Channel 284A
presently allocated to Sac City Iowa; (2) substitute Channel
285C2 for Channel 285A at Spencer, Iowa; and (3) substitute
Channel 268A for Channel 285A at St. James, Minnesota.

St. James Minnesota; Order to Show Cause

2. Since Station KXAX(FM) St. James, MN, licensed to
Rogers Broadcasting, Inc., presently operates on Channel 285A,
the Notice, at paragraphs 6-8 ordered that Rogers Broadcasting
Inc. show cause why KXAX's license should not be modified for
operation on Channel 268A, in lieu of Channel 285A, by filing a

written statement no later than September 12, 1994. The Notice provided further, that failure of Rogers Broadcasting Inc. to timely file such a written statement would be deemed a consent to such a modification of KXAX's license. A search of the filings in this Docket disclosed no such filing by Rogers Broadcasting Inc. Therefore, it is concluded that Rogers Broadcasting Inc. has consented to the proposed modification of KXAX's license to specify operation on Channel 268A.

Sac City, Iowa

3. The Notice stated that absent an expression of interest by the Comment Date, herein (September 12, 1994), it was proposing deletion of Channel 284A at Sac City, Iowa.

4. Subsequent to the July 20, 1994 release of the Notice, Kevin Lein, on August 1, 1994, filed application for Channel 284A at Sac City, and on September 12, 1994, through counsel, filed Comments, herein, noting the filing of that application by Lein and opposing the deletion of Channel 284A at Sac City.^{1/}

5. Additionally, one Curtis J. Rogers (not to be confused with Rogers Broadcasting Inc.), through counsel, filed timely Comments, herein, expressing Mr. Rogers' intention of applying for Channel 284A at Sac City, but noting that he would not file application while the status of that allotment is in question.

^{1/} Lein's Comments, at paragraph 1, states that Petitioner requested an upgrade of KIGL(FM) from Channel 285C2 to 285A. This obviously is a typographic error; Petitioner seeks an upgrade from 285A to 285C2.

6. Shortly before the Comment date herein, Petitioner became aware of the filing of Lein's application for Channel 284A, at Sac City. and requested Petitioner's consulting engineer to determine if an alternate Channel was available at Sac City. It was determined that Channel 240A could be allocated to Sac City, in full compliance with the FCC's Rules. Accordingly, Petitioner, in its timely Comments and Alternate Counterproposals, herein, filed September 12, 1994, proposed, as part of its First Counterproposal, the substitution of Channel 240A in lieu of 284A at Sac City.

Adoption of Petitioner's First Alternate Counterproposal Will Best Serve the Public Interest

7. Petitioner's First Alternate Counterproposal requests: (1) substitution of Channel 268A for Channel 285A at St. James, MN. and modification of Station KXAX's license to specify operation on Channel 268A; (2) the substitution of Channel 240A for Channel 284A at Sac City, Iowa; and (3) the upgrade of KIGL Spencer, Iowa from Channel 285A to Channel 285C-2, all in full compliance with FCC Rules, including minimum mileage separation requirements. This First Counterproposal should be adopted.

8. First, there is no bar respecting the substitution of Channel 268A for Channel 285A at St. James, MN, and the modification of KXAX's license to specify operation on Channel 268A. By failing to show cause why that substitution and

modification of license should not occur, Rogers Broadcasting Inc. has consented to such changes, and such changes otherwise are in the public interest. Petitioner again commits that it will reimburse Rogers Broadcasting Inc. for its reasonable costs incurred to switch Station KXAX to Channel 268A and will accept a condition on the Commission's Report and Order, herein, to that effect.

9. Second, the substitution of Channel 240A for Channel 284A at Sac City, MN will likewise serve the public interest and not prejudice Kevin Lein nor Curtis J. Rogers. Since the window for filing for Channel 284A at Sac City, Iowa closed many months ago, the Channel was available for an application on a first come-first serve basis. Kevin Lien filed such an application on August 1, 1994, and since that was prior to the Comment date herein (September 12, 1994), and, since Kevin Lein filed timely Comments, herein, expressing a continued interest in that application, a conflict arose as to whether or not that Channel should be deleted. Petitioner, in its timely First Alternate Counterproposal has resolved that conflict by proposing substitution of Channel 240A in lieu of 284A at Sac City, Iowa. Consistent with Commission precedent, upon adoption of this substitution, Kevin Lein shall be given an opportunity to amend his application to Channel 240A, without losing his first come-first serve status. As shown at Figure 1 of the Technical Statement attached to Petitioner's Comments and Alternate Counterproposals filed herein on September 12, 1994, there is a relatively large area in which to locate a

transmitter site for operation on Channel 240A. Provided Petitioner's Station KIGL is upgraded to Channel 285C2 in the Commission's Report and Order, herein, Petitioner will agree to a condition in that Report and Order to reimburse Mr. Lein for reasonable costs to amend his Channel 284A application to specify a new site for operation on Channel 240A. As for Curtis J. Rogers, while he has expressed an interest in filing application for Sac City he has not yet done so. Moreover, substituting Channel 240A at Sac City for 284A will not prejudice Mr. Rogers, for his application, whether it be for Channel 240A or 284A, if filed, will be held in queue behind Mr. Lein's application, as specified in Section 73.3573(g)(3) of the Commission's Rules and Regulations.

Conclusion

10. In view of the foregoing it is respectfully submitted that the public interest will be best served by amending the Commission's FM Table of Allotments proposed by Petitioner in its First Alternative Counterproposal, to wit:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Sac City, Iowa	284A	240A
Spencer, Iowa	285A, 299C1	285C2, 299C1
St. James, MN	263C2, 285A	263C2, 268A

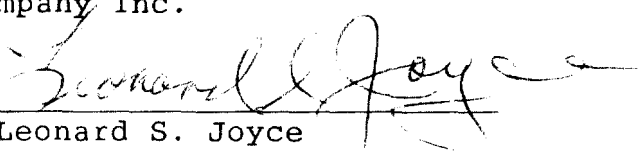
Grant of these amendments to the Table of Allotments will provide wide area coverage by KIGL; improved coverage by KXAX; and, equivalent coverage by a Sac City station.

11. If, for any reason, and Petitioner knows of none, the Commission should decline to substitute Channel 240A for Channel 284A at Sac City, Iowa, then, but not otherwise Petitioner requests adoption of its Second Counterproposal, providing for the substitution of Channel 285C3 for 285A at Spencer Iowa (and modification of KIGL's license accordingly) and the substitution of Channel 268A for Channel 285A at St. James, MN (and modification of KXAX's license accordingly). Only if both Petitioner's First and Second Counterproposals are rejected, for reasons unknown to Petitioner, should Petitioner's Third Counterproposal be adopted.

Respectfully Submitted

Iowa Great Lakes Broadcasting
Company Inc.

By


Leonard S. Joyce

Its Counsel

Laws Offices Of Leonard S. Joyce
5335 Wisconsin Avenue
Suite 300
Washington, D.C 20015

September 27, 1994

CERTIFICATE OF SERVICE

I, Snowdeen Dove, a secretary in Laws Offices of Leonard S. Joyce, do hereby certify that the foregoing Reply Comments of Iowa Great Lakes Broadcasting Company, Inc. was served this 27th day of September, 1994, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

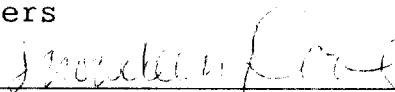
John A. Karousos
Acting Chief, Allocations Branch
Mass Media Bureau
2025 M Street, N.W.
Washington, D.C. 20554

Leslie K. Shapiro
Allocations Branch
Mass Media Bureau
Room 8313
2025 M Street, N.W.
Washington, D.C. 20554

Richard Rogers, President
Rogers Broadcasting Inc.
P.O. Box 465
St. James, MN 56081

David D. Oxenford, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza LLP
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
Counsel for Kevin Lein

John S. Neely, Esq.
Miller & Miller P.C.
P.O. Box 33003
Washington, D.C. 20033
Counsel for Curtis J. Rogers

/s/ 
Snowdeen Dove